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No. 82-1668

IN THE
Supreme Court of the United States

OCTOBER TERM, 1982

CECELIA YOUNG, *Appellant*,

v.

TOWN OF ATLANTIC BEACH, *Appellee*.

On Appeal From The Supreme Court Of North Carolina

MOTION OF APPELLEE, TOWN OF ATLANTIC BEACH, TO DISMISS OR AFFIRM

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May 10, 1983

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QUESTIONS PRESENTED

1. Whether the Appellant has a constitutional right to keep livestock on her property within the town limits in violation of a town ordinance prohibiting persons within the town limits from keeping livestock, animals or poultry.

2. Whether the town's livestock ordinance violates Amendment 5 of the Constitution of the United States in denying the Appellant "due process of law."

3. Whether the town's livestock ordinance violates the 14th Amendment to the United States Constitution by depriving the Appellant of her property without due process of law or by denying her equal protection of the law.

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Appellee, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, moves to dismiss this appeal on ground that the question posed by the Appellant is so unsubstantial as not to warrant further argument. In the alternative, the Appellee moves that the decision of the North Carolina Supreme Court be affirmed.

I
THE MUNICIPAL ORDINANCE INVOLVED AND THE NATURE OF THE CASE

A. The Ordinance

This appeal raises the question of the validity of the Town of Atlantic Beach's ordinance regulating the keep-

ing of livestock, animals and poultry within the city limits of said town. The Town of Atlantic Beach is a municipal corporation authorized by the General Statutes of the State of North Carolina. It adopted a livestock ordinance pursuant to specific provisions of the General Statutes of North Carolina. In particular, N.C. General Statutes 160A-174(a) authorizes a city, by ordinance, to define, prohibit, regulate or abate acts, omissions or conditions detrimental to the health, safety or welfare of its citizens and the peace and dignity of the city and may further define and abate nuisances. N.C. General Statute 160A-186 specifically authorizes cities, by ordinance, to regulate, restrict or prohibit the keeping, running, or going at large of any domestic animal, including dogs and cats.

Based upon these statutory authorities, the Town of Atlantic Beach adopted an ordinance which prohibited the keeping within the city limits of the town of livestock, animals or poultry other than house pets.[1] At the time of the adoption of the ordinance, the Appellant resided within the town limits of the Town of Atlantic Beach in a

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[1] BE IT ORDAINED by the Board of Commissioners and Mayor of the Town of Atlantic Beach, N.C., sitting in Special Session on the 26th day of July, 1979, that

WHEREAS it is deemed that the keeping of livestock, animals, and poultry within the city limits of the town is not consistent with the public health, safety and welfare, and indeed poses threats to both; then

It shall be unlawful for any person, firm or corporation to keep, within the town limits, livestock, animals, or poultry other than house pets. This prohibition shall be interpreted to include horses, cows, goats, sheep, chickens and turkeys, but this list is not to be deemed all inclusive.

This Ordinance is to become effective on the 26th day of August, 1979.

residential subdivision which was comprised of residential lots being sixty (60') feet wide by two hundred (200') feet deep. The Appellant at the time of the adoption of the ordinance and at all times pertinent thereafter kept on her property two goats and a pony.

B. The Proceedings Below

The Town brought suit against the Appellant on the 8th day of October, 1980, to enjoin the Appellant from keeping the goats and pony on her property. In her answer, the Appellant admitted that she kept two goats and a pony on her property but contended that these animals were "house pets" and, therefore, excepted under the ordinance. The Appellant also contended that the ordinance was unconstitutional. Both parties moved for summary judgment which the trial court allowed in favor of the Appellant. The Town appealed to the North Carolina Court of Appeals which affirmed the trial court. From this judgment, the Town petitioned for discretionary review by the North Carolina Supreme Court which granted the petition. The Supreme Court held that the lower courts were in error and reversed the case remanding it to the trial court to enter summary judgment in favor of the Town of Atlantic Beach enjoining the Appellant from keeping her two goats and pony on her premises within the town limits. This opinion was filed January 11, 1983. *Town of Atlantic Beach* v. *Young*, 306 N.C. 752, 295 S.E. 2d 764 (1983). (Jur. Statement Appendix p. 20)

II
ARGUMENT

The Case Presents No Substantial Question Not Previously Decided By This Court

In the Appellant's jurisdictional statement, she urges that there are no guidelines established by the federal

judiciary with respect to the limits of control on the fundamental property rights of animal ownership. She urges this court to allow full argument in order that specific guidelines for regulation by legislative bodies of use and ownership of this type of property be forthcoming. It is respectfully submitted, that this Court as well as most state Courts have previously ruled on the constitutional validity of ordinances or statutes regulating or prohibiting the possession and use of animals, in general.

Most of the constitutional challenges to animal and livestock control ordinances were made in the late 1800's and early 1900's. This Court passed upon a municipal ordinance regulating dairy and cow stables in the case of *Fischer* v. *St. Louis*, 194 U.S. 361, 48 L. Ed. 1018, 24 Sup. Ct. (1904), and in *Schefe* v. *St. Louis*, 194 U.S. 373, 48 L. Ed. 1024, 24 Sup. Ct. 676 (1902). In these cases, the City of St. Louis adopted an ordinance which provided in pertinent part: "no dairy or cow stables shall hereafter be erected, built or established within the limits of this city without first having obtained permission so to do from the municipal assembly by proper ordinance . . ." Fischer maintained a dairy within the city and was found guilty of violating the criminal provisions of this ordinance. On appeal to the U.S. Supreme Court, he contended (almost identically with what the Appellant presently contends) that the ordinance denied equal protection of the laws to all of a disfavored class; that the ordinance denied the Appellant his property without due process of law, and denied him equal protection of law. In overruling these objections to the ordinance, this Court stated:

> "The power of the legislature to authorize its municipalities to regulate and suppress all such places or occupations as in its judgment are likely to be injurious to the health of its inhabitants or to disturb people living in the immediate neighborhood by loud

> noises or offensive odors, *is so clearly within the police power as to be no longer open to question.* The keeping of swine and cattle within the city or designated limits of a city has been declared in a number of cases to be within the police power." (emphasis supplied)

This Court further stated that the fact that the ordinance allowed the municipal assembly discretion in granting permission to keep cattle was not unconstitutional discrimination. The Court held: "We have no criticism to make of the principle of granting a license to one and denying it to another, and are bound to assume that the discrimination is made in the interest of the public, and upon the conditions applying to the health and comfort of the neighborhood." In conclusion, this Court stated: "It is sufficient for us to hold, as we do, that the ordinance in question does not deprive the defendant of his property without due process of law, nor deny to him the equal protection of the laws."

The Appellant contends that the ordinance is vague because a "reasonable person" cannot know if all house pets are permitted or not. The Appellant attempts to challenge the ordinance in areas where she is not affected. The ordinance specifically proscribes the keeping of horses and goats and there is nothing vague in this prohibition since any interpretation of the ordinance discloses that these animals are not allowed. The Appellant cannot challenge the ordinance on hypothetical grounds which do not directly affect her, *Peters* v. *Hobby*, 349 U.S. 331, 99 L. Ed. 1129, 75 S. Ct. 790 (1954).

The North Carolina Supreme Court has considered and passed upon each of the constitutional challenges raised by the Appellant. As noted earlier, constitutional challenges of livestock ordinances have been ruled upon by a number of state courts and federal courts. (See generally

Ex Parte Matthews, 58 Cal. App. 649, 209 Pac. 220 (1922) and 32 A.L.R. 1372.)

III
MOTION TO AFFIRM

Alternatively, the Appellee moves to affirm the judgment of the North Carolina Supreme Court upholding the constitutionality of the municipal livestock ordinance.

The North Carolina Supreme Court carefully considered and ruled upon each of the Appellant's constitutional challenges and upheld the constitutionality of the ordinance. This decision follows recognized constitutional principles and prior decisions of this Court as well as most state courts upholding the authority of municipalities to enact livestock control ordinances.

It is readily apparent that in crowded city conditions, certain individual rights must give way to the public good. The keeping of livestock within town limits can so obviously be a nuisance as well as a health hazard as to not require further consideration. Most towns and cities throughout the United States have enacted livestock control ordinances for the general welfare of their citizens. To now allow the unrestricted keeping of such animals within cities and towns on the basis of the constitutional right to own property would deny municipalities effective use of the police powers in order to abate nuisances and prevent health hazards.

The determination of what constitutes a health hazard or a nuisance is for the decision of the legislative body. The Town of Atlantic Beach has determined, as have most municipalities, that the keeping of livestock within the town limits should be prohibited because of the likelihood that such possession will be a nuisance or health hazard. The Courts are not allowed to substitute their

judgment for that of the legislative body where the questions of the need for such ordinances are reasonably open to differing opinions. *Berman* v. *Parker*, 348 U.S. 26, 99 L. Ed. 27, 75 S. Ct. 98 (1954).

IV
CONCLUSION

Wherefore, Appellee respectfully submits that the question upon which this cause depends is so unsubstantial as not to need further argument, and Appellee respectfully moves the Court to dismiss this appeal, or in the alternative, to affirm the judgment entered in this cause by the Supreme Court of North Carolina.

RESPECTFULLY SUBMITTED, this 10th day of May, 1983.

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